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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/510,044

10/19/2004

Jorma Sarja

59643.00524

4249

32294 7590 05/27/2009  
SQUIRE, SANDERS & DEMPSEY L.L.P.  
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EXAMINER

DUONG, FRANK

ART UNIT

PAPER NUMBER

2416

MAIL DATE

DELIVERY MODE

05/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/510,044	<b>Applicant(s)</b> SARJA ET AL.	
	<b>Examiner</b> Frank Duong	<b>Art Unit</b> 2416	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 January 1938.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-17 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 18-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is a response to communications dated 05/07/09. Claims 1-38 are pending in the application.

#### ***Response to Amendment***

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 18-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As per claims 18-27, the newly amended claims commonly added new limitations of "a receiver" and "a processor" in the claimed "apparatus." There is no evidence of support in the original specification for such claimed "apparatus" having the newly added limitations structurally and functionally interconnected in a manner as claimed.

As per claims 28-34, the newly amended claims commonly added new limitations of "a receiver," "a transmitter" and "a processor" in the claimed "apparatus." There is no evidence of support in the original specification for such claimed "apparatus" having the newly added limitations structurally and functionally interconnected in a manner as claimed.

As per claims 35-36, there is no support in the original specification for the claimed "computer program" causing "a processor" to perform the claimed steps in a manner as claimed.

As per claim 37, there is no support in the original specification for the claimed limitation of "receiving means," "determining means," and "responding means," structurally and functionally interconnected in a manner as claimed.

As per claim 38, there is no support in the original specification for the claimed limitation of "receiving means," "sending means," "determining means," and "informing means," structurally and functionally interconnected in a manner as claimed.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-10 and 35-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-10 are drawn to a process. However, such process is not tied to another statutory class, i.e., a particular machine or apparatus or such process

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transforming underlying subject matter to a different state or thing. Not meeting neither of the requirements, the method is not a patent eligible process under § 101. Thus, claims 1-10 are rejected as being directed to non-statutory subject matter. See *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

Claims 35-36 are rejected under 35 U.S. 101. Without further clarification from the specification, the examiner is reading computer readable media to include signals and other intangible media. A signal encoded with functional descriptive material does not fall within any of the categories of patentable subject matter. It is noted in the MPEP that a product is a tangible physical article or object, which a signal is not. Machine and composition of matter also require physical matter. Furthermore, what is claimed is clearly not a series of steps or acts to constitute a process. Thus a signal does not fall within one of the four statutory classes of 35 U.S.C § 101. Therefore, claims 35-36 are directed to non-statutory subject matter.

### ***Allowable Subject Matter***

5. Claims 11-17 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record, considered individually or in combination, appears to fail to fairly show or suggest a claimed invention comprising, among other limitations, novel and unobvious limitations of "*determining in the network gateway whether a conflict exists between attribute values of the traffic flow parameters and attribute values of the packet*

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*classifier; and when there is a conflict, informing the mobile station,”* structurally and functionally interconnected with other limitations in a manner as recited in claims 11-17.

### **Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shieh (PGPUB 2002/0184510).

ETSI TS 123 207, V5.0.0, End to end quality of service concept and architecture, 50 pages, June 2001.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Duong whose telephone number is 571-272-3164. The examiner can normally be reached on 7:00AM-3:30PM, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Moe S. Aung can be reached on 571-272-7314. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frank Duong/  
Primary Examiner, Art Unit 2416  
May 22, 2009